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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT THOMPSON, MARK DEBELACK, TIELIN XU,  
MORGAN SKINNER, and RICHARD STORMS

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Appeal 2010-007897  
Application 09/723,319  
Technology Center 3600

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*Before* ANTON W. FETTING, JOSEPH A. FISCHETTI, and  
MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Robert Thompson et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-11, 13-14, 17-30, 32-43, and 46. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM-IN-PART.<sup>1</sup>

## THE INVENTION

This invention is “a resource management system that manages worker resources based on factors including work plans input by the workers.” Spec. 1:9-10.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A resource management system comprising:  
a work plan builder module configured to build work plans for workers, said work plan builder module being configured to allow each worker to specify, for each of a plurality of different time periods during each of one or more workdays, one of a plurality of different activities that the worker plans to perform during that time period, wherein said work plan builder module is configured to permit each worker to specify by selection from a displayed list of work activities two or more different work activities that the worker plans to

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed Dec. 28, 2009) and Reply Brief (“Reply Br.,” filed Apr. 19, 2010), and the Examiner’s Answer (“Ans.,” mailed Feb. 17, 2010).

perform during different time periods of the same  
workday;

a computer-accessible memory for storing the  
work plans built by said work plan builder module;  
and

a forecast module for comparing a service level  
forecasted to be needed for different work  
activities and a service level corresponding to the  
workers that plan to engage in these different work  
activities as specified in the work plans and  
permitting changes to the work activities specified  
in the work plans for one or more workers based  
on the comparing.

#### THE REJECTION

The Examiner relies upon the following as evidence of  
unpatentability:

Amin	US 6,208,340 B1	Mar. 27, 2001
O'Brien	US 6,587,831 B1	Jul. 1, 2003
Dellevi	US 6,957,188 B1	Oct. 18, 2005

Moseley, Lonnie E., et al., *Mastering Microsoft Office 97 Professional Edition*. [Hereinafter, Moseley.]

The Examiner took Official Notice “that it is old and well known in graphical user interface art and to one of ordinary skill in the art to display a list (e.g., a drop-down widget) with a plurality of choices (e.g., work activities) as evidenced by Amin et al., (US 6,208,340 B1) in Figures 3 and 4 which... illustrates a drop-down widget that allow[s] a user to select multiple choices from the drop down list.” Ans. 8 and 21. [Hereinafter, Official Notice I.]

The Examiner took Official Notice “that answering electronic mail messages and regular mail messages are all well known job activities performed by workers.” Ans. 9. [Hereinafter, Official Notice II.]

The Examiner took Official Notice “that it is old and well known in Human Resources management to communicate to a worker the amount of leave they have remaining in their work account.” Ans. 11 and 13. [Hereinafter, Official Notice III.]

The Examiner took Official Notice that “it is well known that an employee must specify to an employer his/her work plans by a particular deadline.” Ans. 15. [Hereinafter, Official Notice IV.]

The Examiner took Official Notice “that wireless devices, kiosks, and handheld computing devices were all well-known remote terminals connectible to a communications network at the time of the invention.” Ans. 23. [Hereinafter, Official Notice V.]

The following rejection is before us for review:

1. Claims 1-11, 13-14, 17-30, 32-43, and 46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over O’Brien, Dellevi, Moseley, Official Notice I, evidenced by Amin, and Official Notice II-V.

#### ISSUE

The issue is whether claims 1-11, 13-14, 17-30, 32-43, and 46 are unpatentable under 35 U.S.C. § 103(a) over O’Brien, Dellevi, Moseley, Official Notice I, evidenced by Amin, and Official Notice II-V. Specifically, the issue is whether the prior art teaches the limitations recited in claim 1.

#### ANALYSIS

*Claims 1, 3, 5, 7, 9-11, 14, 17-21, 26- 29, 33-36, 42, 43, and 46*

The Appellants argued claims 1, 3, 5, 7, 9-11, 14, 17-21, 26- 29, 33-36, 42, 43, and 46 as a group. App. Br. 12-19. We select claim 1 as the

representative claim for this group, and the remaining claims 3, 5, 7, 9-11, 14, 17-21, 26- 29, 33-36, 42, 43, and 46 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2010).

To traverse the rejection of claim 1, the Appellants make several arguments. *See* App. Br. 12-19.

First, the Appellants argue that the combination of O’Brien, Dellevi, Moseley, and Official Notice I-V, supported by Amin, does not disclose all of the recited functional limitations of claim 1. For example, Claim 1 states:

said work plan builder module being configured *to allow* each worker *to specify*, for each of a plurality of different time periods during each of one or more workdays, one of a plurality of different activities that the worker plans to perform during that time period.

(Emphasis added.)

The Appellants argue that O’Brien does not teach the workers specifying the activities in which they plan to engage during a plurality of time periods. App. Br. 15. However, the Appellants’ argument is not commensurate with the scope of the claim. This limitation is more broadly directed to a work plan builder module that is configured to *allow* the workers to specify different activities. That is, claim 1 only requires that the work plan builder module has a structure that *allows* functions to occur, one of which is to allow the workers to specify the activities, and hence does not limit the claim to the degree argued by Appellants.

Similarly, claim 1 recites that the work plan builder module “is configured *to permit* each worker to specify by selection from a displayed list of work activities.” Again, the Appellants seem to argue that the prior art does not disclose each worker to specifying a work activity by selection

from a displayed list of work activities. *See* App. Br. 13. However, claim 1 only requires that the work plan builder module has a structure that *permits* this selection from the displayed list. Therefore, we find this argument unpersuasive.

Second, the Appellants argue that none of the references teach the forecast modules for comparing a service level forecast recited in claim 1. App. Br. 16 and Reply Br. 2. Specifically, the Appellants argue that Dellevi does not teach “a forecasted service level or any comparisons to such a level.” App. Br. 16. However, the Examiner relies on O’Brien to teach this limitation. *See* Answer 4-5. The Appellants do not address the Examiner’s findings as to the teachings of O’Brien nor do Appellants address the Examiner’s finding that the combination of O’Brien and Dellevi teaches the entire comparing step. Therefore, we are not persuaded by this argument.

Finally, the Appellants argue that the Examiner’s taking of Official Notice I is improper. App. Br. 17-18. We are not persuaded by this argument because: 1) the Appellants’ argument is not an adequate traversal and 2) the Appellants’ argument is untimely.

The Appellants’ argument does not traverse what the Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret Appellants’ arguments and comments as constituting a traverse, Appellants’ arguments and comments do not appear to constitute an adequate traverse because Appellants have not specifically pointed out the supposed errors in the Examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 37 C.F.R. § 1.104(d)(2), MPEP § 707.07(a). An adequate

traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728 (CCPA 1971).

Also, we agree with the Examiner (Answer 33) that the Appellants did not seasonably traverse the Examiner's taking of Official Notice, and, therefore, the object of the Official Notice is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 711, 713 (CCPA 1943) ("In the absence of anything in the record to contradict the examiner's holding, and in the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.").

For the reasons above, we find the Appellants' argument unpersuasive, and we affirm the rejection of claims 1, 3, 5, 7, 9-11, 14, 17-21, 26-29, 33-36, 42, 43, and 46 as being unpatentable over O'Brien, Dellevi, Moseley, and Official Notice I-V, supported by Amin.

*Claims 2, 4, 6, 22, 23, and 24*

To traverse the rejection of claims 2, 4, 6, 22, 23, and 24, the Appellants traverse the Examiner's taking of Official Notices II and III. The Appellants again argue that the Examiner has improperly taken Official Notice II. App. Br. 20-22. For the same reasons set forth above in regards to the traversal of Official Notice I, we are not persuaded by this argument. Accordingly, the rejection of claims 2, 4, 6, 22, 23 and 24 under 35 U.S.C. § 103(a) is affirmed.



*Claim 8*

To traverse the rejection of claim 8, the Appellants argue that the Examiner has not supplied any evidence to support the taking of Official Notice IV and has merely asserted that claim 8 is obvious. App. Br. 22.

However, the Appellants' argument does not address the Examiner's taking of Official Notice IV (*see* Answer 15). In as much as the Appellants' argument may be considered a traversal of Official Notice IV, we find the Appellants' traversal inadequate for the same reasons as discussed above with regards to Official Notice I. Therefore, we find the Appellants' argument unpersuasive.

Accordingly, the rejection of claim 8 under 35 U.S.C. § 103(a) is affirmed.

*Claims 13 and 32*

Claim 13 recites "said forecast module is configured to generate a graphical display indicative of the comparison of the work plans and the forecasted needs." Claim 32 recites a similar limitation. The Appellants argue that the portions of O'Brien, cited by the Examiner, fail to teach "a graphical display" as recited in these claims. App. Br. 23.

However, the Appellants' argument is not commensurate with the scope of these claims. Claim 13 does not require a graphical display but instead is directed to the structure of a forecast module. Since the Appellants fail to argue the differences in the structure of the forecast module required by claim 13 and the structure disclosed in the prior art, we

find the Appellants' argument unpersuasive. Accordingly, the rejection of claims 13 and 32 under 35 U.S.C. § 103(a) is affirmed.

*Claim 25*

The Appellants argue that the cited portions of O'Brien do not disclose "a worker generating a default work plan, much less creating a new plan by modifying such a default plan." App. Br. 23.

Again, the Appellants' argument is not commensurate with the scope of the claims. Claim 25 only requires that the work plan builder module *enables* each worker to generate a default plan or a modified default work plan. Therefore, we find the Appellants' argument unpersuasive.

Accordingly, the rejection of claim 25 under 35 U.S.C. § 103(a) is affirmed.

*Claim 30*

The Appellants argue that the cited portions of O'Brien fail to teach the "real-time status module for providing real-time statistics" as recited in claim 30. App. Br. 24. In the rejection, the Examiner cites column 5, lines 10-37 and lines 50-67 and column 6, lines 1-25 and lines 44-65. Ans. 23 and 37. We agree with the Appellants (App. Br. 24) that nothing in these cited passages teaches this limitation. Accordingly, the rejection of claim 30 under 35 U.S.C. § 103(a) is reversed.

*Claims 37-41*

The Appellants argue that the cited portions of O'Brien fail to teach the "current day activity monitor module for providing a real-time

comparison” as recited in claim 37. App. Br. 24. In the rejection, the Examiner cites column 5, lines 10-37 and lines 50-67 and column 6, lines 1-25 and lines 44-65. Ans. 24 and 38. We agree with the Appellants (App. Br. 24) that nothing in these cited passages teaches this limitation. Accordingly, the rejection of claim 37 and claims 38-41, dependent thereon, under 35 U.S.C. § 103(a) is reversed.

#### DECISION

The decision of the Examiner to reject claims 1-11, 13-14, 17-29, 32-38, 42, 43, and 46 is affirmed and to reject claims 30 and 37-41 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

#### AFFIRMED-IN-PART

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